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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

STANDARD LIFE & ACCIDENT INSURANCE COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF AS AMICUS CURIAE OF AMERICAN COUNCIL OF LIFE INSURANCE

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BRIEF AS AMICUS CURIAE OF AMERICAN COUNCIL OF LIFE INSURANCE

This brief is submitted with the written consent of counsel to both parties filed with the Clerk of the Court.

Interest of the Amicus Curiae

The American Council of Life Insurance is a trade association with a membership of 444 companies engaged in the

life insurance business.[1] These companies account for 92 percent of the legal reserve life insurance in force in the United States.

The issue here involves the treatment of deferred and uncollected premiums under the Life Insurance Company Income Tax Act of 1959 (sections 801-820 of the Internal Revenue Code of 1954, as amended)[2] (the "1959 Act"). This is a question of major importance affecting the federal income taxation of every life insurance company.

Lower Court Decisions

No fewer than five different results have been reached in seeking to resolve the issue presented here. For the convenience of the Court, we describe them:

(1) The first result, that reached by the Tenth Circuit in this case and advocated by the taxpayer, would include no portion of deferred and uncollected premiums in either assets or income.

(2) The second result, that favored by the Tax Court, reached by one district court and advocated by the *amicus*, would include no more than *net* deferred and uncollected premiums in both assets and income.[3]

(3) The third result, that reached initially by the Fourth, Fifth, Sixth and Seventh Circuits and advocated by the government as its "primary position", would include *gross* deferred and uncollected premiums in both assets and income.[4]

[1] The American Council of Life Insurance came into being through merger in 1976 of the American Life Insurance Association (successor to the American Life Convention and the Life Insurance Association of America) and the Institute of Life Insurance.

[2] Unless otherwise indicated, section references are to the Internal Revenue Code of 1954 (the "Code").

[3] *Western Nat'l Life Ins. Co.*, 50 T.C. 285 (1968), *mod.*, 51 T.C. 824 (1969), *rev'd*, 432 F.2d 298 (5th Cir. 1970); *Western and Southern Life Ins., Co.*, 55 T.C. 1036 (1971), *rev'd*, 460 F.2d 8 (6th Cir. 1972), *cert. denied*, 409 U.S. 1063 (1972); *cf. Bankers Union Life Ins. Co.*, 62 T.C. 661 (1974); *Franklin Life Ins. Co.* v. *U.S.*, 19 AFTR2d 1734, 67-2 U.S.T.C. ¶ 9515 (S.D. Ill. 1967), *rev'd*, 399 F.2d 757 (7th Cir. 1968), *cert. denied*, 393 U.S. 1118 (1969).

(4) The fourth result, that reached more recently by a number of lower courts (including the Fifth and Seventh Circuits) would include *gross* deferred and uncollected premiums in income[5] and assets[6], but would allow a reduction for expenses associated with their collection.

(5) The fifth result, that recommended by one trial judge in the Court of Claims and advocated by the government as its "alternative position", would include no portion of deferred and uncollected premiums in either assets or income but would reduce reserves by amounts equal to the net valuation portion of such premiums.[7]

[4] *Franklin Life Ins. Co.* v. *U.S.*, 399 F.2d 757 (7th Cir. 1968), *rev'g* 19 AFTR2d 1734, 67-2 U.S.T.C. ¶ 9515 (S.D. Ill. 1967), *cert. denied*, 393 U.S. 1118 (1969); *Jefferson Standard Life Ins. Co.* v. *U.S.*, 408 F.2d 842 (4th Cir. 1969), *aff'g in part, rev'g in part*, 272 F.Supp. 97 (D. N.C. 1967), *cert. denied*, 396 U.S. 828 (1969); *Western Nat'l Life Ins. Co.* v. *Commissioner*, 432 F.2d 298 (5th Cir. 1970), *rev'g* 51 T.C. 824 (1969), *modifying* 50 T.C. 285 (1968); *Western and Southern Life Ins. Co. v. Commissioner*, 460 F.2d 8 (6th Cir. 1972), *rev'g* 55 T.C. 1036 (1971), *cert. denied*, 409 U.S. 1063 (1972).

[5] *Great Commonwealth Life Ins. Co.* v. *U.S.*, 491 F.2d 109 (5th Cir. 1974); *Federal Life Ins. Co.* v. *U.S.*, 527 F.2d 1096 (7th Cir. 1975); *North American Life & Casualty Co.* v. *Commissioner*, 533 F.2d 1046 (8th Cir. 1976), *aff'g* 63 T.C. 364 (1974); accord, *United Life & Accident Ins. Co.* v. *Commissioner*, 329 F.Supp. 765 (D. N.H. 1971); *Midland Nat'l Life Ins. Co.* v. *Commissioner*, 66 T.C. 550 (1976).

[6] In *Bankers Life Co.* v. *U.S.*, 412 F.Supp. 62 (S.D. Iowa, 1976), the excess of gross over net deferred and uncollected premiums (*i.e.*, the loading) was held to have been excludable from assets on the ground that such excess constituted an asset used in an insurance business. But see *Republic Nat'l Life Ins. Co.* v. *U.S.*, 77-1 U.S.T.C. ¶ 9133 (N.D. Tex. 1976).

[7] *Monumental Life Ins. Co.* v. *U.S.*, 39 AFTR2d ¶ 77-306, 76-2 U.S.T.C. ¶ 9787 (Ct. Cl. 1976). On the other hand, a week earlier, another trial judge of the Court of Claims recommended that gross deferred and uncollected premiums be included in income, that a deduction be allowed for estimated expenses of collection and that, absent a statutory change, reserves could not be reduced. *Lincoln Nat'l Life Ins. Co.* v. *U.S.*, 38 AFTR2d 76-6126, 76-2 U.S.T.C. ¶ 9772 (Ct.Cl. 1976). The Court of Claims itself has not passed on any aspect of the question.

Thus, no court has allowed the government to make any reduction in reserves. Rather, the differences of opinion that have arisen have largely been with respect to the treatment of deferred and uncollected premiums in calculating assets and income.

Position of the Amicus Curiae

First and foremost, it is our position that Congress meant to afford full tax recognition to aggregate life insurance reserves as certified by the various state regulatory authorities and that, apart from certain exceptions specified in the statute, it meant no change in this regard from prior law. Regardless of how deferred and uncollected premiums are treated for asset and income purposes, whether includible in full, in part, or not at all, reserves as defined in section 801 of the Code should not be reduced on account of deferred and uncollected premiums.

Beyond this, whether Congress intended to include deferred and uncollected premiums in "assets" and "income" turns on whether it contemplated the application of normal tax rules and meanings to them, or whether it intended a special accounting treatment of these items because of their uniqueness to life insurance companies. If it intended that, in the computation of "taxable investment income" and "gain from operations", "assets" and "income" are to retain their normal tax meanings, the conclusion is inescapable that deferred and uncollected premiums are neither assets nor income and the decision below should be affirmed.

On the other hand, if Congress meant to supersede those meanings, the statutory reference in section 818(a) to "computations . . . in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners" (hereinafter "NAIC") should control, since it is the only statutory provision sanctioning a departure from normal tax rules. The Annual Statement, a mandatory and uniform accounting system for life insurance companies, has

for over 100 years required the inclusion of *net* (as opposed to *gross* as contended for by the government) deferred and uncollected premiums in assets. It follows that if Congress meant to depart from normal tax principles and require the inclusion of deferred and uncollected premiums in assets and income, it meant to adopt the Annual Statement treatment pursuant to which only net deferred and uncollected premiums are included in assets and income.

It is, and consistently has been, the position of the *amicus* and its predecessors that Congress intended that the NAIC treatment be followed. While the position of the *amicus* constitutes the position of the industry organization as a whole, not all companies subscribe to the view that we urge here. Some companies (including, of course, the taxpayer) believe that there are strong legal arguments to support the result reached by the court below.

Because we continue to believe that the correct result under the statute is that net deferred and uncollected premiums should be included in assets and income, our arguments here are directed to this point. Should this Court not agree, we respectfully suggest that the most appropriate result is the one reached by the Tenth Circuit below.

Statement

The applicable Code provisions and the facts of this case are recited in the government's brief. (P. Br. 3-15).[8] The *amicus* submits, however, that the government's statement is misleading in at least three significant respects.

First, the government suggests that the amount of a life insurance company's reserve is dependent on the amount of premiums actually received. The fact is that life insurance reserves are required to be computed with respect to *all policies in force* at the end of the year on the basis of the *net* premiums that are *assumed* to have been received,

[8] References herein to "P. Br." are to the government's brief.

irrespective of what gross premiums may have in fact been paid by the policyholders. It is stipulated that the taxpayer in this case was "required . . . to compute its reserves . . . on the assumption that premiums were paid up one year in advance on each anniversary date . . . of the policy, even though premiums were not usually paid in this manner." (Stip. par. 11, p. 17; Pet. App. A 3a, App. B 11a).[9] The reserves so computed are the required reserves both for purposes of Oklahoma law and for purposes of the Code.

Second, the government states that the insurer has no obligation to continue the insurance coverage beyond the period for which premiums have been paid. This ignores the fact that whether the insurance will be continued is a matter wholly beyond the control of the company. Accordingly, so long as a policy is in force, the company's contingent liability ("risk") is for the entire life of the insured.[10]

Third, the government wrongly states that the computation of taxable investment income is controlled by the ratio of reserves to assets.[11] The government goes on to argue that it is justified in adding loading to the net deferred and uncollected premiums shown in assets on the balance sheet by the necessity of maintaining its erroneous ratio in the computation of taxable investment income. This is a complete *non sequitur* because there is no correlation whatever between the ratio of net to gross premiums and the ratio of reserves to assets.

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[9] References herein to "Pet." are to the petition for a writ of *certiorari*.

[10] Moreover, if a premium is not paid, under the non-forfeiture provisions the company may remain liable for the full coverage for an extended period of time without receiving any future premiums at all.

[11] While it is true that an increase in reserves decreases the tax and an increase in assets increases the tax, the faulty algebra used by the government to derive its erroneous ratio (P. Br. 6, 40) is apparent if one follows the statutory provisions which it more accurately describes in n. 6 (P. Br. 6). See also the example set forth in S. Rep. No. 291, 86th Cong., 1st sess. 18 (1959), 1959-2 Cum. Bull. 770, 783.

The government argues that if it does not prevail on its primary position, then alternatively the reserves required by state law should be reduced on account of deferred and uncollected premiums. There is no basis for that extreme position, and, in the *amicus'* view, it should be rejected out of hand.[12] But since the government has seen fit to inject it into the case, the *amicus* has no choice but to respond. We do so not only because the government's alternative would unsettle what has been settled since the very beginnings of the income tax, but also because it would have a most serious financial impact on the entire life insurance industry. Accordingly, the *amicus* addresses the government's alternative position first. Thereafter, we address those issues that are genuinely in controversy, *i.e.*, the proper treatment of deferred and uncollected premiums in calculating assets and income.

Summary of Argument

I

In 1909, Congress provided a deduction for federal excise tax purposes based on reserves of a life insurance company required by state law. It adopted the same approach in the first income tax act, that of 1913, and in every successive income tax statute, including the Life Insurance Company Income Tax Act of 1959. Among the reserves required by state law are reserves for all policies in force, including those on which premiums are deferred or uncollected. Thus, as to such policies, it was stipulated here that state law requires reserves to be computed on the assumption that all premiums are paid on the anniversary date of a policy, regardless of when premiums have actually been received.

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[12] It was stipulated that taxpayer's "reserves [computed on the assumption that premiums were paid annually in advance] were reflected as a liability of [taxpayer] and, as required by the [Code], were taken into account in the computations required under sections 805 and 809 on the . . . tax returns". Stip. par. 11, p. 17, *supra*.

There can be no doubt at this late date that, in keeping with Congress' overall approach to reserves that the federal tax law is to follow state law, reserves for tax purposes are not to be reduced on account of deferred and uncollected premiums. This precise issue was raised and decided as early as 1918, and the Bureau of Internal Revenue itself concurred in that result in 1921. Furthermore, Congress on numerous occasions from 1921 through 1957, and in the 1959 Act itself, changed the provisions for reserve deductions and prescribed certain specific exceptions to the general rule that reserves for tax purposes are those required by state law. But it at no time intimated that there was to be any change in the established treatment of reserves for policies with deferred and uncollected premiums.

Despite Congress' unequivocal record over a period of 50 years, the government contends in the alternative that, if gross deferred and uncollected premiums are not included in assets and income, reserves must be reduced accordingly. The government claims no support for this argument in the statute, the legislative history, applicable state law, or industry practice, and there is none. Rather, the government relies on a regulation which purports to mandate this result. By no stretch of the imagination can this regulation be considered an interpretation of the 1959 Act; nor is there basis for respectable argument that Congress authorized the promulgation of any such rule. For these reasons, the regulation is invalid.

In any case, the regulation is inapplicable because, by its terms, it applies only if deferred and uncollected premiums are excluded entirely from assets and income. Our position here, however, is that such premiums should not be excluded entirely, but that the net amount thereof is properly includible in assets and income.

II

The government's "primary position"—that gross deferred and uncollected premiums must be included in assets

and income—similarly has no merit. Under normal tax accounting rules, it is clear that since an insurance company has no legal right to such premiums, they constitute neither assets nor accruable income. The government does not contend otherwise.

Our position is that, but for the reference in section 818(a) of the Code to the NAIC Annual Statement, normal tax accounting rules would apply and deferred and uncollected premiums would be excludable in their entirety from assets and income. It is further our position that, in view of that reference, any departure from normal tax accounting rules must accord with the prescribed NAIC treatment. Under consistently applicable NAIC rules, only the net portion of deferred and uncollected premiums is includible in assets and income and, therefore, only that portion should be includible in assets and income for tax purposes.

The government claims that neither normal tax accounting rules nor established NAIC rules should be followed. Its principal argument is that, since it is assumed in computing reserves that all net premiums are paid on the anniversary date of a policy, consistency and symmetry demand that, in calculating assets and income, it be assumed that all gross premiums are paid annually in advance. Accordingly, the government would require the inclusion of gross deferred and uncollected premiums in assets and income.

In advancing this contention, the government ignores the fact that a life insurance company necessarily will incur expenses in the process of collecting deferred and uncollected premiums, and that these expenses will reduce assets and income. Yet the government nowhere states that it would permit a reduction in assets and income to reflect such expenses. In consequence, the government's theory would produce the bizarre result that a company with deferred and uncollected premiums will have greater assets and income than one that has in fact received an equivalent amount of premiums in cash.

Finally, while the linchpin of the government's argument is the need for consistency, the government itself refuses to be consistent. To be totally consistent, both assets and income would have to be reduced by estimated expenses of collection of deferred and uncollected premiums. However, as indicated above, the view of the *amicus* is that Congress intended to adopt the well-understood approach of the NAIC. It did so, not to achieve the notion of symmetry advocated by the government, but because that approach was practical, in accord with longstanding requirements of state regulatory authorities and clearly reflects income.

Argument

I. Since 1909, Life Insurance Reserves "Required by Law" for Purposes of Federal Income Taxation Have Been the Reserves Certified To by the State Regulatory Authorities Without Reduction on Account of Deferred and Uncollected Premiums

A. Tax recognition of life insurance reserves based on state requirements

The computation of life insurance reserves has long been the exclusive province of state law. Congress confirmed the preeminent role of the states in life insurance matters when it enacted the McCarran-Ferguson Act (15 U.S.C. §§ 1011-1015), and this Court has acknowledged the states' authority to set "reasonable minimum reserve standards for the protection of policyholders." *Robertson* v. *California*, 328 U.S. 440, 459 (1946).

This is no less so in tax matters than in substantive life insurance matters. The cornerstone of life insurance company tax treatment in each of the statutes covering life insurance companies since 1909 has been recognition that "life insurance companies are required by law to maintain policyholder reserves to meet future claims, that they normally add to these reserves a large portion of their investment income and that these annual reserve increments

should not be subjected to tax." *United States* v. *Atlas Life Ins. Co.*, 381 U.S. 233, 236 (1965).[13]

The legally required life insurance reserve, a creature of state law and a product of actuarial science, is an estimate of the present value of unaccrued policy obligations. State laws and regulations impose standards governing the assumptions and estimates that underlie the valuation of legally required life insurance reserves. Amounts of insurance in force at year-end are multiplied by reserve factors that are established on the basis of a number of state approved actuarial assumptions. In the case of ordinary life insurance, these have customarily included, in addition to mortality and interest rates, the assumption that all net valuation premiums on policies in force are paid annually at the beginning of their respective policy years. Thus, as the government states (P.Br. 4), it was found below (Pet. 3a): "Pursuant to Oklahoma law, respondent was required to compute its reserves on its policies on the assumption that the annual premiums had been paid as of the anniversary date of the policy, whether or not this was the case."

In our view, nothing more is necessary to dispose of this aspect of the case. The reserves shown on the Annual Statement are the reserves required by law and constitute the "life insurance reserves" to be used for tax purposes under sections 805 and 810.[14]

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[13] See also *Maryland Casualty Co.* v. *U.S.*, 251 U.S. 342 (1920), in which this Court expressly acknowledged the overriding importance of state regulatory authority in the recognition of reserves for tax purposes.

[14] Procedurally, life insurance reserves are computed by the company itself by applying factors, derived from published actuarial tables, to amounts of insurance in force by policy type at year-end. The figures are then submitted to the regulatory authority of the state of domicile. When and if approved, the domiciliary state regulatory authority issues a "certification of valuation of policies" which sets forth the dollar value of the aggregate of each type of reserve categorized with reference to the various mortality standards and interest assumptions previously approved by the state for the policies in question. The NAIC has prescribed a form to be used by an insurance company in preparing its Annual Statement. This form, which must be filed with a life insurance company's income tax return (see Treas. Reg. § 1.6012-2), provides for the setting forth of the life insurance reserves so certified.

B. *Prudential* v. *Herold*—Life insurance reserves and deferred and uncollected premiums

From the enactment of the Corporation Excise Tax of 1909[15] through the Income Tax Act of 1913[16] and until the Revenue Act of 1921,[17] life insurance companies were taxed on their total income with a deduction for "the net addition . . . required by law to be made within the year to reserve funds." Nearly 60 years ago, in *Prudential Ins. Co. of America* v. *Herold,* 247 F. 681 (D. N. J. 1918), the government challenged the assumption that underlies the present controversy. The taxpayer there computed its deduction for "the net addition . . . required by law to be made within the year to reserve funds" with reference to the reserve valuation certified by the New Jersey Commissioner, which included policies having premiums that were deferred and uncollected. The government argued that since the taxpayer was on the cash basis of accounting, it was not entitled to credit for the full value of the reserves on such policies because the deferred and uncollected premiums had not been included in taxable income. The court examined and rejected this argument, setting the precedent for full recognition of life insurance reserves without reduction on account of deferred and uncollected premiums under all ensuing income tax statutes:

> "The question to be decided, therefore, is whether the plaintiff, in figuring its net addition to the reserve funds which it was required by law to make, was justified in including the value of such policies. The argument upon which the defendant's contention in this respect is based seems to be that as part of the assets making up the plaintiff's 'reserve' consisted of these uncollected and deferred premiums, and as they are not included in the plaintiff's gross income (as, clearly, they should not be so included, Mutual Benefit Life Ins. Co. v. Herold . . . [198 F. 199 (D. N. J. 1912)]; Conn. Gen. Life Ins. Co. v. Eaton . . . [218 F. 188 (D. Conn. 1914)]), that the value of such policies should not be included, for purposes of taxation, in its net addition to reserve funds. But this argument, I think, begs the question, which is, as clearly defined by the Supreme Court in McCoach v. Insurance Co. of North America, 244 U.S. 585, 37 Sup. Ct. 709, 61 L. Ed. 1333, what sum or sums in the aggregate did the state laws require the plaintiff to maintain as a 'reserve fund,' not the character of the assets making up the actual 'reserve funds.' No matter what their character, they were as effectively withdrawn from the plaintiff's use as if they had been expended. If therefore the law of New Jersey, or any other state in which it did business, made it obligatory on the part of the plaintiff to maintain a 'reserve' on account of the policies of the character in question, it is of no materiality what the 'reserve funds' actually consisted of, whether cash, securities, real estate, or due and uncollected premiums." 247 F. at 685-86 [Citations added].

[15] Act of August 5, 1909, ch. 6, § 38, 36 Stat. 113.

[16] Act of October 3, 1913, ch. 16 II(G)(b), 38 Stat. 114.

[17] Ch. 136, § 245(a)(2), 42 Stat. 227.

Subsequently, the Bureau of Internal Revenue acquiesced in this reasoning and ruled not only that "generally speaking . . . [the aggregate reserve shown on] . . . the liability page of the [NAIC] annual statement . . . will be considered reserves as contemplated by the statute" but also *specifically* that "uncollected and deferred premiums cannot reduce reserves". Treas. Dept., Bureau of Internal Revenue, Bulletin H, Income Tax Rulings Peculiar to Life Insurance Companies (1921), Rulings 8 and 14, pp. 7 and 9.[18]

C. From 1921 through 1957, life insurance companies were taxed on their investment income with an allowance for interest on reserves required by law, without reduction on account of deferred and uncollected premiums

In 1921, the "total income" approach for life insurance companies was abandoned, and Congress substituted a tax

[18] Because of the limited availability of "Bulletin H" *amicus* has lodged with the Clerk, for the convenience of the Court, 40 xerox copies of the pages of "Bulletin H" pertaining to life insurance companies. In addition to the pages cited above, see 20 and 26.

based solely on investment income. Through 1957, this base remained the sole basis for taxation of income from the life insurance business. For most of these 37 years, the reserve interest allowance was computed by applying a specified interest rate to each company's reserves required by law. However, in no fewer than five instances, Congress altered the manner in which the allowance was to be computed.[19] But critical for present purposes is the fact that, despite these alterations, Congress at no time departed from the principle that, for tax purposes, life insurance company reserves are not to be reduced on account of deferred and uncollected premiums. This principle thus was well settled when Congress considered the bill which became the Life Insurance Company Income Tax Act of 1959.

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[19] From 1921 to 1931 each company deducted 4% of its *own* reserves without reduction on account of deferred and uncollected premiums. From 1932 to 1941 each company deducted 3.75% of its *own* reserves, again, without reduction on account of deferred and uncollected premiums. In 1942 this company-by-company approach was dropped and an industry-wide method of determining the deduction was substituted. There was no change, however, in respect of deferred and uncollected premiums. From 1942 to 1948 each company deducted a fixed percentage of its net income (the "Secretary's ratio") computed by the Secretary of the Treasury for the entire industry based in part (65%) on the prior year's actual reserve requirements for the industry computed without reduction on account of deferred and uncollected premiums and in part (35%) on the assumption that an investment income rate of return equal to 3¼% was required for the entire industry. For 1949 and 1950 the deduction was determined by the Secretary of the Treasury based entirely (instead of 65%) on the average reserve requirements for the industry for the preceding year. Here too the ratio was derived from reserves computed on the basis of net valuation premiums with no reduction on account of deferred and uncollected premiums. For the years 1951 through 1957 Congress in effect continued to tax the life insurance industry on a uniform percentage of net investment income. See generally Report on the Taxation of Life Insurance Companies, Subcommittee on Internal Revenue Taxation, Committee on Ways and Means, U.S. House of Representatives, December 31, 1958.

D. The 1959 Act: The changes that Congress made and those it did not make

The provisions of the 1959 Act as well as the exhaustive studies, hearings and reports accompanying it give no hint of any departure from the established pattern of accepting state certified life insurance reserves without any reduction on account of net deferred and uncollected premiums. This is important because in responding to Congressional requests for a more permanent basis for taxing life insurance companies, the Secretary of the Treasury, after specifically commenting on two possible adjustments to reserves, said:

> "At this time we have no recommendations for or against other specific reserve adjustments. . . . However, every departure from the allowance for policy reserves used in determining the net gain from operations reported in the annual statement to the State insurance departments would represent a complication which could be justified only by persuasive equity and technical considerations."[20]

On this record, without more, the only reasonable conclusion is that Congress, in enacting the 1959 Act, intended that life insurance reserves not be reduced on account of deferred and uncollected premiums in determining life insurance company taxable income.

This conclusion is reinforced by the fact that Congress, in the 1959 Act, provided for five adjustments to life insurance company reserves as determined for state regulatory purposes.[21] It did so only after the most careful

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[20] Hearings before the Subcommittee on Internal Revenue Taxation of the Committee on Ways and Means, 85th Cong., 2d Sess., 5, November 17-20, 1958; Hearings before the Committee on Finance, 86th Cong., 1st Sess., 513, March 3-5, 17-19, 1959.

[21] Four of these adjustments are mandatory: the elimination of deficiency reserves by section 801(b)(4); the "10 for 1" rule set

(*footnote continued*)

consideration and the reasons for each of these changes are fully documented in the reports of the tax-writing committees.[22]

Thus, although Congress in 1959 comprehensively examined the functions and purposes of life insurance reserves for tax purposes, it did not provide for any adjustment to reserves required by law on account of deferred and uncollected premiums.

Given these circumstances, it seems clear that if Congress had intended such an adjustment it would have said so. This is underscored by the realization that any reduction of reserves on account of deferred and uncollected premiums would have had a very substantial tax impact. The proponents of the 1959 Act repeatedly emphasized that, except for the changes specified, the Act was not intended to disturb the traditional assumptions underlying reserve valuations. Thus, the Chairman of the House Ways and Means Committee, in introducing the legislation to the full House, stated:

> "[T]he committee has no intention of placing jurisdiction of the management of insurance company reserves within the hands or powers of the Commissioner of Internal Revenue.• • •
>
> "We are trying to preserve as best we can in this bill the management of this industry in the hands of

(*footnote continued*)

forth in section 805(c); the adjustments for certain transfers of liabilities in section 806(a); and the treatment of changes of basis in computing reserves set forth in sections 806(b) and 810(d). The other adjustment, which is optional, is set forth in section 818(c), and permits a life insurance company computing its reserves on a preliminary term basis to revalue such reserves on a net level premium basis.

[22] H.R. Rep. No. 34, 86th Cong., 1st Sess. 11, 17-19, 22, 26-27, 29, 32, 42 (1959), 1959-2 Cum. Bull. 736 *et seq.*; S. Rep. No. 291, 86th Cong., 1st Sess. 15, 19, 30-31, 34, 42, 49, 51-52, 57, 73 (1959), 1959-2 Cum. Bull. 770 *et seq.*

> the State regulatory agencies and not to change in any way that situation so as to turn over to the Commissioner of Internal Revenue, the Secretary of the Treasury, or anyone else in Washington the regulatory authority.
>
> ". . . We are not saying that a company may not accumulate reserves if the state regulatory body tells it to accumulate reserves. We are not levying a tax on the accumulation of those reserves." 105 Cong. Rec. 2569, 2476-77 (1959).

The Senate report accompanying the new law confirms that, except for the changes specified, the definition of life insurance reserves (section 801(b) of the Code, as amended) "is the same as that contained in . . . existing law."[23] Prior to the 1959 Act, the definition of life insurance reserves derived from section 201(c)(2) of the 1939 Code, added by the Revenue Act of 1942. The committee reports accompanying the 1942 Act both state that the statutory definition "is substantially that contained for many years in the regulations."[24] Accordingly, there is no indication of a shift in congressional policy with respect to these reserves, and there is strong evidence that no shift was intended.

The 1959 Act Regulations continue to use language comparable to that contained in regulations going back through the Revenue Act of 1921 to the effect that:

> "In determining total reserves, a company is permitted to make use of the highest aggregate reserve required by any State or Territory or the District of Columbia in which it transacts business, but the reserve must

[23] S. Rep. No. 291, *supra*, at 42; see also H.R. Rep. No. 34, *supra*, at 22.

[24] H.R. Rep. No. 2333, 77th Cong., 1st Sess. 109 (1942), 1942-2 Cum. Bull. 372, 454; S. Rep. No. 1631, 77th Cong., 2d Sess. 145 (1942), 1942-2 Cum. Bull. 504, 612.

have been actually held during the taxable year for which the reserve is claimed." Treas. Reg. §1.801-5(a).

Moreover, "reserves required by law" are defined as

> "reserves which are required either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute and which are reported in the annual statement of the company and accepted by state regulatory authorities as held for the fulfillment of the claims of policyholders or beneficiaries." Treas. Reg. § 1.801-5(b).

If more were needed, it is found in the very explicit language of Treas. Reg. § 1.6012-2(c) which provides in part:

> "(c) Insurance companies.—(1) Life insurance companies.—A life insurance company subject to tax under section 802 or 811 shall make a return on Form 1120L. There shall be filed with the return (i) a copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, which is filed by the company for the year covered by such return with the Insurance Departments of States, Territories, and the District of Columbia, and which shows the reserves used by the company in computing the taxable income reported on its return, and (ii) copies of Schedule A (real estate) and Schedule D (bonds and stocks) of such annual statement."

Overall, the regulations exemplify and implement the intent of Congress to continue recognition of those life insurance reserves certified by the states.[25]

[25] Compare the 1959 Act regulations with Reg. 62., Art. 681 (issued under the 1921 Act), and Bulletin H, *supra*, 20.

The five Courts of Appeals that have considered the question presented here have made no adjustment in life insurance reserves on account of deferred and uncollected premiums. This result is solidly supported by the statute, its legislative history, prior statutes and applicable case law.

In the face of this evidence, the government's primary position concedes that reserves are not to be reduced on account of deferred and uncollected premiums. The government contends in the alternative, however, that if deferred and uncollected premiums are not included at gross in assets and income, the net deferred and uncollected premiums are to be subtracted from reserves. In advancing this alternative the government relies on Treas. Reg. § 1.801-4(f) which provides:

> "In the event it is determined on the basis of the facts of a particular case that premiums deferred and uncollected and premiums due and unpaid are not properly accruable for the taxable year under section 809 and, accordingly, are not properly includible under assets (as defined in section 805(b)(4)) for the taxable year, appropriate reduction shall be made in the life insurance reserves. This reduction shall be made when the insurance company has calculated life insurance reserves on the assumption that the premiums on all policies are paid annually or that all premiums due on or prior to the date of the annual statement have been paid."

The government cites no basis for this strongarm regulation, and we know of none. Quite apart from the fact that it was promulgated without prior notice,[26] this regulation disregards a half-century of uniform tax treatment of reserves. It is unsupported by even a single word of the 1959 Act. Indeed, not even the voluminous legislative history of

[26] *See* Administrative Procedure Act, § 3(b), 5 U.S.C. § 553(b).

the 1959 Act provides any justification for the government's alternative claim. Worse still, the regulation is punitive in its effect. By imposing a sanction, it discourages a life insurance company from having its tax liability determined in accordance with the law as Congress wrote it, rather than as the Treasury Department would have written it. It is, in short, a pernicious and, so far as we are aware, unique regulatory provision that should not be sustained. If the Internal Revenue Service is dissatisfied with the tax consequences under the 1959 Act, it should ask the Congress to change them. It has not been given blanket authority to rewrite the law.[27]

While we believe that the regulation is invalid—and patently so—we do not think it is necessary for the Court to reach this question, because, in our view, the regulation is by its own terms inapplicable in the circumstances presented here. Under Treas. Reg. § 1.801-4(f), a reduction in reserves is to be made only if deferred and uncollected premiums "are not properly accruable for the taxable year under section 809 and, accordingly, are not properly includible under assets (as defined in section 805(b)(4)). . . ." But our position here is that net deferred and uncollected premiums *are* properly accruable and hence includible in assets under the correct interpretation of sections 805 and 809. This being the case, there is neither cause nor need to invoke the

[27] The government cannot justify the regulation on the ground that it is needed to preclude what is perceived by the government to be an improper result. Congress was very much aware when it enacted the Life Insurance Company Income Tax Act of 1959 of the need to preclude improper results under the intricate scheme which it mandated—and it took careful and painstaking steps to prevent this. Thus, in section 818(e), Congress declared: "Nothing in this part shall permit the same item to be deducted more than once under subpart B and once under subpart C." Congress did not enact a second provision to the effect that, if gross deferred and uncollected premiums are not included in assets and income, life insurance reserves must be reduced by an amount equal to net deferred and uncollected premiums. Nor did it empower the Treasury Department to promulgate such a provision.

sanction of a reduction in the reserves which a life insurance company is required by law to maintain.[28]

Given the invalidity or the inapplicability of the regulation, the only question is whether and, if so, to what extent life insurance companies must include deferred and uncollected premiums, which they have no legally enforceable right to collect, in "assets" and "premiums" (as those terms are defined in sections 805(b)(4) and 809(c)(1)) for purposes of determining respectively their "taxable investment income" and "gain from operations." We turn now to this question.

II. Congress Intended Life Insurance Companies to Account for Deferred and Uncollected Premiums in Determining Their Assets and Income Under the 1959 Act in the Same Manner as Those Items Are Accounted For in the NAIC Annual Statement

A. Background

In 1959, Congress returned to a total income approach to the taxation of life insurance companies. Taxable investment income, the sole tax base from 1921 to 1957, became the base for the Phase I tax. Within that phase, the definition of taxable investment income began, as before, with net investment income. The reserve interest allowance, however, was to be computed under a formula that took into account a company's own investment "earnings rates" rather than industry-wide reserve interest requirements.

[28] Indeed, the concept of subjecting life insurance reserves to tax accruability requirements is based on a *non sequitur* because by definition life insurance reserves are held for "future *unaccrued* claims . . . involving . . . life . . . contingencies" [emphasis added] (Section 801(b)) and because they are exempted from the accounting rules provided for other items. See Treas. Reg. § 1.806-4, providing that a change in the basis for valuing reserves is not subject to rules for changes in accounting method. See also *Brown* v. *Helvering*, 291 U.S. 193 (1934), in which this Court noted that normal rules of accrual accounting do not apply to life insurance reserves.

"Gain from operations" became the base for the new Phase II and Phase III taxes. Such gain was defined as including both premium income and investment income.

The 1959 Act also added section 818 to the Code containing "Accounting Provisions" specifically applicable to life insurance companies. These provisions, among other things, required the companies to discontinue the use of the cash method of reporting for tax purposes.[29] The pertinent provisions of this section are as follows:

> "Sec. 818. Accounting Provisions.
>
> (a) Method of Accounting. All computations entering into the determination of the taxes imposed by this part shall be made
>
> (1) under an accrual method of accounting,
> or
>
> (2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).
>
> Except as provided in the preceding sentence, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners."

It has generally been recognized by all of the courts that have considered the matter that deferred and uncollected premiums, which a life insurance company has no legally enforceable right to collect, are not assets in the ordinary sense of the word nor in an "investment" sense, and would not accrue as receivables under the generally

[29] Since 1951, the NAIC has required inclusion in the Annual Statement of a "Summary of Operations" prepared on "an accrual basis."

applicable rules of tax accrual accounting.[30] If Congress intended such rules to apply to deferred and uncollected premiums it seems inescapable that the court below correctly concluded that nothing is includible in either assets or premium income on account of deferred and uncollected premiums.

The terms "assets" and "gain from operations" had not been of critical importance in the taxation of life insurance companies prior to the 1959 Act. Nevertheless, the terms had previously been used and understood, in connection with the treatment of deferred and uncollected premiums, by insurance companies and state regulatory bodies in the Annual Statement prescribed by the NAIC.

Since 1871, "assets", as reflected in the Annual Statement, have included only net deferred and uncollected premiums. Reserves for policies in force, including those on which premiums are deferred and uncollected, are computed on the basis of net annual premiums and are reflected on the Annual Statement at Exhibit 8. The Statement requires, however, that net premiums (i.e., deferred and uncollected premiums excluding loading) also be reflected as assets. Where, as in this case, there are reserves reflected in the Annual Statement on account of policies with deferred and uncollected premiums, net deferred and uncollected premiums are reflected as assets on the balance sheet. Reserves are not dependent to any extent on loading. Accordingly, there is no inclusion of loading in assets.

In 1951, "gain from operations" was first reflected in the Annual Statement. Since that time, net gain from operations shown in the "Summary of Operations" likewise has reflected only net deferred and uncollected premiums. This means, that because the deduction for increases in

[30] The Tax Court initially found this result consistent with its concept of the purpose of the formula for determining taxable investment income, *i.e.*, that only assets producing investment income were includible. *Western Nat'l Life Ins. Co., supra,* 50 T.C. at 285.

reserves involves only net premiums, there is included in income, on account of policies with deferred and uncollected premiums, only the net portions of such premiums. Since loading on premiums does not enter into the computation of reserves, loading on deferred and uncollected premiums is not included in income.

The legislative history of the 1959 Act, as well as the language of Section 818(a), leaves no doubt that Congress was aware of the importance of Annual Statement practices in life insurance company accounting, particularly as they relate to problems generated by regulatory requirements.[31] Accordingly, it seems reasonable to infer that Congress intended that the Annual Statement treatment of deferred and uncollected premiums should be followed for purposes of determining assets and gain from operations under the 1959 Act. This is underscored by the lack of any discernible contrary legislative intent that would authorize a departure from the practice and understanding of the industry with respect to this important item. For this reason, it is the position of the *amicus* that it is proper to include the net amount of such premiums in assets and income, notwithstanding generally applicable tax rules (which would exclude them) or the government's ill-conceived notion of "symmetry".[32]

B. Assets

That Congress intended this treatment reasonably follows, in *amicus'* view, not only from the express reference

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[31] Nor is the Annual Statement new to this Court. In *Maryland Casualty Co.* v. *U.S., supra,* it agreed that the "distinction between the 'reserves' and general assets of a company is obvious and familiar and runs through the statements of claimant and every other insurance company." (251 U.S. 342, 351 (1920)).

[32] Following the NAIC treatment is, of course, consistent with the general rule stated in section 446(a) that "taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books".

to the NAIC Statement in section 818(a), but also from the statutory definition of assets added to the Code by the 1959 Act. A careful reading of section 805(b)(4) shows that it was drafted with reference to the items reflected on the balance sheet in the Annual Statement prescribed by the NAIC (and required by Treas. Reg. § 1.6012-2(c) to be filed with the federal income tax return) except to the extent that the section specifically provides otherwise.[33]

Section 805(b)(4) begins by providing that "the term 'assets' means all assets of the company (including nonadmitted assets)." "Nonadmitted assets" is a term that appears outside the statute only in the Annual Statement to describe certain assets of a life insurance company. "Nonadmitted assets" are eliminated in Exhibit 13 of the Annual Statement from the total assets, and only admitted assets are carried to the asset page of the balance sheet. The parenthetical inclusion in the statute of "non-admitted assets" is a specific adjustment which Congress obviously intended to make to the assets shown on the balance sheet. Exclusion of property (other than money) used in an insurance trade or business is another specific adjustment. A third is the requirement that real property and stock shall be included at fair market value.

In the face of the reference to the balance sheet shown in the Annual Statement and the specific adjustments to certain of the items shown there, it is not reasonable to conclude that Congress without specific language intended gross deferred and uncollected premiums, that do *not*

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[33] Section 805(b)(4) provides:

"ASSETS—For purposes of this part, the term 'assets' means all assets of the company (including nonadmitted assets), other than real and personal property (excluding money) used by it in carrying on an insurance trade or business. For purposes of this paragraph, the amount attributable to—

(A) real property and stock shall be the fair market value thereof, and

(B) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition."

appear as assets on the balance sheet and are *not* assets in the ordinary sense of the word, to be substituted for net deferred and uncollected premiums that *are* shown as assets in the balance sheet.

The government's position that gross deferred and uncollected premiums should be included in assets is, moreover, contrary to its own regulations. They contemplate the inclusion in assets of the net deferred and uncollected premiums shown on the balance sheet. In Example (1) set forth in Treas. Reg. § 1.805-5(a)(4)(ii) it is said:

> "Included in the *statement of assets* of P, a life insurance company, are the following items: . . . premiums deferred and uncollected. . . . Accordingly, since . . . premiums deferred and uncollected . . . are not considered as being used by P in carrying on an insurance trade or business, they are included within the term 'assets' and, therefore, shall be taken into account by P in determining its current earnings rate." [Emphasis added.]

This could refer to no "statement of assets" of a life insurance company other than the one prescribed by the NAIC. In that statement the "deferred and uncollected premiums" that are included have always been net deferred and uncollected premiums and nothing else. If the Treasury Department, in giving this example, had had any idea that section 805(b)(4) required a life insurance company to take into account any amount of deferred and uncollected premiums other than the amount of deferred and uncollected premiums "included in the statement of assets", it presumably would have said so.

C. Income

The general rule for the inclusion of items of income by accrual basis taxpayers is set forth in Treas. Reg. § 1.451-1 as follows:

> "Under an accrual method of accounting, income is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy."

If this rule is applicable, the result reached by the court below in this case would, as in the case of assets, clearly be correct. However, another general rule of tax accounting is set forth in Treas. Reg. § 1.446-1(a)(2), which provides as follows:

> "A method of accounting which reflects the consistent application of generally accepted accounting principles in a particular trade or business in accordance with accepted conditions or practices in that trade or business will ordinarily be regarded as clearly reflecting income, provided all items of gross income and expenses are treated consistently from year to year."

This Court in *Commissioner* v. *Idaho Power Company*, 418 U.S. 1, 15 (1974), said:

> "where a taxpayer's generally accepted method of accounting is made compulsory by the regulatory agency *and* that method clearly reflects income, it is almost presumptively controlling of federal income tax consequences."

The *amicus* submits that the argument in favor of following the Annual Statement treatment of deferred and uncollected premiums in computing gain from operations is even stronger than was the government's argument in the *Idaho Power* case. Here, the method of accounting has not only been prescribed "by the regulatory agency", but it has also been prescribed by section 818 of the Code.

Moreover, just as there is evidence in the statutory definition of assets that Congress intended the NAIC Annual Statement to be the starting point for computing "assets", so there is evidence that the Statement is the starting point for computing "gain from operations". "Gain from operations" is a term of art which appears

outside the statute only in NAIC accounting and is clearly derived from page 4 of the Annual Statement.[34]

The government has argued on numerous occasions that gross deferred and uncollected premiums must be included in income because section 809(c)(1) requires the inclusion of gross premiums in income and no deduction is authorized under any paragraph of section 809(d) for the increase in loading. Section 809(c)(1), however, does not specifically mention deferred and uncollected premiums, and only reference to the NAIC accounting treatment justifies the accrual of anything at all on account of deferred and uncollected premiums.[35] If the last sentence of section 818(a),

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[34] On this the Secretary of the Treasury wrote Congress:

> "We suggest that the starting point for measuring the net earnings should be the figure for 'Net gain from operations after dividends to policyholders' which appears in each company's annual statement to the State insurance departments and which summarizes the operating results for the year. This figure is based on carefully developed life insurance accounting practices which have general acceptance in the industry." Hearings before the Subcommittee on Internal Revenue Taxation of the Committee on Ways and Means, 85th Cong., 2nd Sess., 4, November 17-20, 1958; Hearings before the Committee on Finance, 86th Cong., 1st Sess., 512, March 3-5, 17-19, 1959.

Comments of witnesses quoted by the government (P. Br. 50, n. 35) on the significance of the Summary of Operations were made in the course of vehement opposition to a total income approach. The final form of the statute, of course, reflects a number of substantial and specific modifications of gain from operations shown on the NAIC statement, designed to meet some of the objections of the industry witnesses. Inclusion of loading in assets and premium income was not among these modifications.

[35] As the government recognizes (P. Br. 12-13 and n. 13), elimination of loading from gain from operations is not a deduction, but merely a means of limiting premium income to the increase in net deferred and uncollected premiums. The lower courts that concluded that Congress could not have intended "to relegate the substantive matter of offsetting or excluding loading" to the NAIC have missed the point. Congress did not delegate discretion to the NAIC. It has incorporated the NAIC method of computation in the tax law where the statute does not specifically provide otherwise.

which contains the reference to the NAIC Annual Statement, was not intended to resolve issues such as those presented here, it is hard to see why Congress included it in the statute.

D. The Government's Principal Position Produces Anomalous and Inconsistent Results

Because premium taxes, commissions and other expenses must be paid when premiums are received, the government's contention that gross deferred and uncollected premiums must be included in assets and gain from operations (without reduction for the increase in loading) would produce the anomalous result that a company that has not collected all of its premiums will have greater assets and income than one that has. This anomaly was recognized by the Fifth, Seventh and Eighth Circuits in the *Great Commonwealth, Federal,* and *North American* cases and by the district court in *Bankers Life.*[36] They attempted to rectify it by permitting reductions in income or assets for estimated expenses that would be incurred in the process of collecting deferred and uncollected premiums. The *amicus* would agree that if there were any basis for including the gross amount of deferred and uncollected premiums in assets and income, there would be equal justification for reducing both assets and income by the amount of related expenses. We see no necessity, however, for adopting this approach when assets and income are already clearly reflected by the NAIC method.

To support its claim that the gross amount of deferred and uncollected premiums should be included in assets and income, the government reiterates the proposition that,

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[36] See n. 5 and 6, *supra.* Reductions in assets were not claimed by the taxpayers in the *Great Commonwealth, Federal,* and *North American* cases.

because a life insurance company computes its reserves by assuming collection of net valuation premiums annually in advance, it must include in assets and accrue as premium income the gross amount of deferred and uncollected premiums.[37]

In the first place, the government has never adequately explained how an assumption that is made with respect to net premiums in the appraisal of a contingent liability can cause inclusion of a larger amount in assets or income. A company's liability to its policyholders under policies in force on the statement date is transformed from future unaccrued contingent liabilities into a fixed liability by state law. This liability is taken into account in calculating reserves pursuant to section 801(b). Deductions for increases in the state statutory reserve liability are allowed because section 809(d)(2) says they shall be. These provisions do not create assets or income. Increases in assets or income on account of deferred and uncollected premiums occur, if at all, because section 818(a) requires that tax computations be made in a manner consistent with the NAIC Annual Statement.

The government asserts more than twenty times in its brief that the assumption of full payment of annual premiums on policy anniversary dates must be applied consistently to assets and income, as well as to reserves. In view of these repeated references to the need for consistency, it would seem reasonable to expect that the government itself would see fit to be consistent. But the govern-

[37] Thus, the government tells this Court that (P. Br. 29) deferred and uncollected "premiums must be consistently deemed to have been paid for all purposes"; that (P. Br. 38) "the selfsame assumption" must be made in calculating "gain from operations" and "assets" as is used in calculating reserves; that (P. Br. 49) "these premiums be taken into account consistently for assets as well as liabilities"; that (P. Br. 53) "[t]he integrity of a computation of net income requires that uniform assumptions be made with respect to both income and deduction items"; and that (P. Br. 18) "[s]ymmetry would require . . . that both sides of the equation by which taxable income is determined be treated alike." See also P. Br. 13, 14, 19, 20, 25, 26-27, 28, 36, 37, 43, 44-45, 48, 51, 52; Pet. 18-19.

ment apparently adheres to this principle only up to a point. It fails to recognize that when a life insurance company receives premium income, it necessarily will pay deductible expenses associated with the collection of that income, including agents' commissions, premium taxes and clerical expenses. If it were to be assumed that gross premiums have been received in cash—as the government insists it must be—it would be only fair and reasonable to assume also that, by year-end,[38] concomitant expenses of collection would have been paid in cash. In short, even under the government's theory, both assets and income would be reduced by expenses associated with the collection of deferred and uncollected premiums.

The government's primary position rests entirely on the argument that (P. Br. 29) "[r]espondent cannot take those premiums into account in its 'reserves' when it suits its purposes of reducing its tax base but turn its back on them when their inclusion in 'assets' and 'gross amount of premiums' would increase its tax liability." It is enough to point out in response that it will not do for the government to take those premiums into account when it suits its purpose of increasing respondent's tax base but turn its back on related expenses when their payment would decrease respondent's tax liability.[39]

From the standpoint of consistency, if the gross amount of deferred and uncollected premiums were to be included

[38] The current earnings rate is computed with reference to the mean of the taxpayer's assets at the beginning and end of the taxable year. Section 805(b)(2)(B). Hence, what is important for asset purposes is not what is received during the year but what remains at the end of the year.

[39] In other contexts, the courts have held that the substance of a transaction must be determined by viewing each step of the transaction in relation to the whole. See, *e.g.*, *Commissioner* v. *Court Holding Co.*, 324 U.S. 331, 334 (1945). Just as a taxpayer may not divide a single transaction into separate parts in order to minimize tax, so the government should not be permitted to ignore integral parts of a single transaction in order to maximize tax. *Helvering* v. *New Haven & Shore Line Ry Co., Inc.*, 121 F.2d 985, 988 (2d Cir. 1941), *cert. denied*, 315 U.S. 803 (1942).

in assets and income, it would be reasonable to allow a reduction of both for related expenses. However, such a solution does not have the express statutory authority that the NAIC method does. It is, moreover, unnecessarily complex and offers no demonstrable advantage over the NAIC method that we urge should be followed here. Based on the provisions of the 1959 Act, we submit that Congress decided to leave undisturbed the NAIC treatment of deferred and uncollected premiums. Congress did so, we believe, not because of some recently conceived government theory of symmetry, but because it clearly reflects income and is consistent with what had always been—and remains today—the practice and understanding of the life insurance industry.

Conclusion

For the foregoing reasons, the case should be remanded to the Tax Court with directions to enter judgment for the taxpayer on the basis of the NAIC Annual Statement computations with respect to deferred and uncollected premiums. Alternatively the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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